

State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Amalgamated Transit Union, Local 717

Complainant

v.

Manchester Transit Authority

Respondent

Manchester Transit Authority

Complainant

v.

Amalgamated Transit Union, Local 717

Respondent

Case No. M-0596-16

Decision No. 2001- 110

Case No. M-0596-17

PRE-HEARING DECISION and ORDER

BACKGROUND

The Amalgamated Transit Union, Local 717, ("Union") filed unfair labor practice charges on September 24, 2001 pursuant to RSA 273-A:5 I (a), (e), (g), and (h) [Case No. M-0596-16] alleging that the Manchester Transit Authority ("Authority") and its agents breached certain provisions of the parties' Collective Bargaining Agreement (CBA) by scheduling operators to work in excess of so-called "platform time" and not scheduling the work within the allowed so-called "spread time". Additionally, the Union complains that such actions constituting the breach were undertaken deliberately and that agents of the Authority told the Union to seek adjudicatory relief from the PELRB in the

form of a cease and desist order promising and then pledging to ignore any such order if it were issued. The Union alleges that these actions constituted interference with the administration of the Union and the rights of its members.

The Authority filed its answer on October 4, 2001 stating that the parties have a CBA with a workable grievance procedure. While it admits that it scheduled operators as alleged by the Union, it asserts that such scheduling does not breach their CBA. It denies that its agents told the Union to file for a cease and desist order and denies that its agents stated that if such an order were issued it would be ignored. The Authority further asserts that its conduct relating to scheduling is consistent with the parties' CBA and its implied provisions as established by the past practice of the parties.

Additionally, it responds that since the parties' CBA provides for final and binding arbitration of disputes, the Union has breached the CBA and RSA 273-A:6 by filing this action with the PELRB and not following the grievance procedures contained within the CBA. Further, the Authority seeks a dismissal of the Union's complaint, a finding that the Union has breached the CBA by filing its action with the PELRB and that the Union has violated provisions of RSA 273-A:5, II (a), (d), (f), and (g.). The Authority also requests an award of reasonable attorneys' fees and costs. For its part, the Union has not requested any specific relief from the PELRB at the time the Pre-Hearing Conference was convened by the Hearing Officer.

Subsequent to its answer in Case No.M-0596-16, the Authority filed an unfair labor practice complaint against the Union on October 16, 2001 [Case No. M-0596-17] alleging that the action of the Union in failing to submit its dispute to arbitration constitutes a breach of the parties' CBA in violation of RSA 273-A:5, II (c)(sic). On October 23, 2001, the Union filed its answer to the Authority's complaint. The Union admits the allegations contained in the first four paragraphs of the Authority's complaint that restate, in essence, provisions of the statute and provisions of the parties' CBA. The Union denies that it committed any breach in connection with its filing of its own complaint.

At the Pre-Hearing Conference, the Authority made an oral motion to correct a scrivener's error in its pleadings to change the statutory reference from RSA 273-A:5,II(c) to RSA 273-A:5,II(f). Without objection, it was granted by the Hearing Officer.

PARTICIPATING REPRESENTATIVES

For the Complainant: Vincent A Winners, Jr., Esquire

For the Respondent: Diane Murphy Quinlan, Esquire

PRIMARY ISSUES FOR DETERMINATION BY THE BOARD

1. CASE No. M-0596-17. Whether or not, under the terms of the parties' Collective Bargaining Agreement (CBA) and the provisions of the Public Employees Labor Relations Act (RSA 273-A:1 *et seq*), the Union committed an unfair labor practice when it filed its September 24, 2001 unfair labor practice complaint against the Authority, now docketed at the PELRB as Case No. M-0596-16?
2. CASE No. M-0596-16. Whether or not the scheduling actions of the Authority, undertaken in September of the year 2001 and continuing to the present, constitute a violation of the parties' CBA?
3. CASE No. M-0596-16. Whether or not the Authority deliberately violated the parties' CBA or the Public Employee Labor Relations Act by allegedly advising the Union to seek a cease and desist order and if issued by the PELRB allegedly representing that the Authority would ignore it?

WITNESSES

For the Complainant:

1. John T. Mahoney, transit operator and President of Local 717
2. Donald Gosselin, transit operator and Vice- President of Local 717
3. Louise Gazda, transit operator

For the Respondent:

1. John Webster, Superintendent of Transportation, MTA
2. Donald L. Clay, General Manager, MTA
3. Ronald Roy, former General Manager, MTA

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibit:

1. Current Collective Bargaining Agreement

EXHIBITS (con't)

For the Complainant:

1. Work Schedules from September, 2001 to the present

For the Respondent:

1. None

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

In the event it becomes necessary as a result of the PELRB ruling in M-0596-17, the time being set aside for the evidentiary hearing for Case No. M-0596-16 is one half day. It is anticipated that no hearing time will be necessary on Case No. M-0596-17 as the parties have agreed that said matter shall be decided by the PELRB on the submission of stipulated facts and supportive memoranda of law. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order.

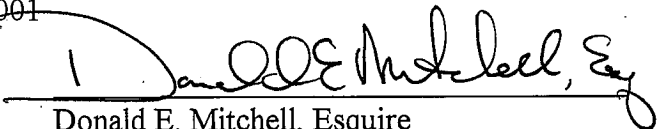
DECISION AND PRE-HEARING ORDER

1. The parties have stipulated that both unfair labor practice complaints, Case No. M-0596-16 and Case No. M-0596-17 may be consolidated for consideration by the PELRB. After further discussion, the parties also agree and have stipulated to the Hearing Officer that in the event the PELRB orders the parties to arbitration as a result of its decision in M-0596-17, that the Union's charges against the Authority as embodied in M-0596-16 shall be dismissed by the PELRB.
2. With respect to the Authority's complaint, Case No. M-0596-17, the parties shall submit an original and five copies of a jointly executed Agreed Statement of Facts on or before November 27, 2001. The Authority shall submit an original and five (5) copies of its Memorandum of Law in support thereof on or before November 27, 2001. The Union shall submit its Memorandum of Law on or before December 7, 2001. The Authority shall submit an original and five (5) copies of any rebuttal memorandum, if necessary, on or before December 14, 2001.

Thereafter, the PELRB shall consider the record comprised of the parties pleadings, the parties' current CBA, the statement of agreed facts, and the memoranda of law, and render its decision.

3. With respect to the Union's complaint, Case No. M-0596-16, the party representatives shall exchange their final Witness and Exhibit lists and each shall forward a copy of any modifications of their respective lists to the no later than December 28, 2001. The party representatives shall meet, or otherwise arrange, to pre-mark for identification purposes and exchange copies of their respective proposed exhibits, excepting those singularly required for impeachment purposes, no later than January 10, 2002. Such exhibits shall be produced in sufficient number at the hearing as required by Pub 203.02.
4. Any preliminary, procedural or dispositive motions shall be filed by the parties no later than fifteen (15) days prior to the scheduled hearing date.
5. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties on Case No. M-0596-16 is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Thursday, January 10, 2002 beginning at 9:30 A.M.

Signed this 1st day of November, 2001


Donald E. Mitchell, Esquire
Hearing Officer